

PATENT APPLN. NO. 10/563,126
SUBMISSION UNDER 37 C.F.R. § 1.114

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REMARKS

In the Advisory Action, the Office states, regarding Yonekawa:

"The fact remains that Yonekawa does not disclose anywhere that the reaction goes to completion and that 100% of the reactants are reacted to form the final product."

(Advisory Action, page 2, lines 4-5).

This statement is not correct. Yonekawa discloses in paragraph [0009] that in the obtained lithium cobalt composite oxide, a part of Co is uniformly replaced by zirconium atom without leaving unreacted ZrO₂. Yonekawa discloses in paragraph [0033] that in the lithium cobalt composite oxide of Yonekawa's invention, Co site has been replaced by Zr so that neither ZrO₂ nor Li₂ZrO₃ substantially exists. Yonekawa further discloses in paragraph [0032] that ZrO₂ does not remain in the form separated with the lithium cobalt system multiple oxide. Therefore, contrary to the statement in the Advisory Action that "applicants make assumptions with regards to the chemistry of the reaction" (page 2, lines 3-4), Yonekawa explicitly discloses that all of Zr atoms exist in replaced Co sites.

On the other hand, the position of the Office is based on only an incorrect calculation and assumptions. The assumptions of the

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Office that the reaction may not go to completion and that 100 % of the reactants may not be reacted are not supported by any evidence and are inconsistent with the disclosures of Yokokawa described above.

Anticipation of a claim under 35 U.S.C. §102 requires the disclosure in a single prior art reference of every limitation of the claimed invention, either explicitly or inherently. In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997). The claim limitation or limitations must necessarily be included in the prior art reference in order for the reference to anticipate. Inherency may not be established by possibilities or probabilities. The fact that a limitation might result from the disclosure of a reference is not sufficient. In re Oelrich, 666 F.2d 578, 581, 212 USPQ 323, 326 (CCPA 1981) and In re King, 801 F.2d 1324, 1326, 231 USPQ 136, 138 (Fed. Cir. 1986). Yonekawa is insufficient to show that the limitations of the claims of the present application are necessarily included therein.

Removal of the rejections of the claims over Yonekawa is in order for the reasons explained above. Removal of the rejections of the claims over Le and over Le in view of Shen is in order in view of the amendments to claim 1 made in the response filed June

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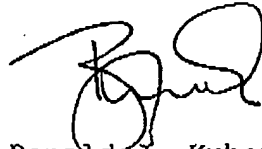
10, 2010, and which have now been entered by the filing of the RCE, and for the reasons explained in the response filed June 10, 2010.

In the event that this paper is not considered to be timely filed, applicants hereby petition for an appropriate extension of time. The fee for any such extension may be charged to our Deposit Account No. 111833.

In the event any additional fees are required, please also charge our Deposit Account No. 111833.

Respectfully submitted,

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